

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEAN GRAY and	)	
STEPHANIE GRAY, Individually,	)	Civil Action
and as Parents and Natural	)	No. 08-cv-02527
Guardians of S.G., a Minor,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	
	)	
GEORGE E. DARBY;	)	
EASTERN PA CONFERENCE OF THE	)	
UNITED METHODIST CHURCH;	)	
SOUTHWEST DISTRICT OF THE	)	
EASTERN PA CONFERENCE OF THE	)	
UNITED METHODIST CHURCH;;	)	
LIMEVILLE UNITED METHODIST	)	
CHURCH;	)	
BISHOP MARCUS MATTHEWS;	)	
REV. JAMES TODD, District	)	
Superintendent; and	)	
JOHN AND/OR JANE DOES 1-10,	)	
	)	
Defendants	)	

O R D E R

NOW, this 25th day of March, 2009, upon consideration of the Motion of Defendants, Eastern PA Conference of the United Methodist Church, Southwest District of the United Methodist Church, Bishop Marcus Matthews, and District Superintendent Rev. James Todd, to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(1), which motion was filed July 14, 2008; upon consideration of Defendant, Limeville United Methodist Church's Motion to Dismiss Plaintiffs' Complaint, which motion was filed August 5, 2008; upon consideration of the briefs of the parties; it appearing that this court lacks jurisdiction over the subject

matter of this action; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that the Motion of Defendants, Eastern PA Conference of the United Methodist Church, Southwest District of the United Methodist Church, Bishop Marcus Matthews, and District Superintendent Rev. James Todd, to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(1) is granted.

IT IS FURTHER ORDERED that Defendant, Limeville United Methodist Church's Motion to Dismiss Plaintiffs' Complaint is granted.

IT IS FURTHER ORDERED that the Complaint is dismissed against all defendants, including answering defendant George E. Darby, without prejudice for plaintiffs to file an amended complaint which pleads sufficient facts to support a finding of subject matter jurisdiction.

IT IS FURTHER ORDERED that plaintiffs shall have until on or before April 15, 2009 to file an amended complaint which pleads sufficient facts to support a finding of subject matter jurisdiction. Failure to file an amended complaint by April 15, 2009 may result in dismissal of this action for lack of prosecution.

BY THE COURT:

/s/ James Knoll Gardner  
James Knoll Gardner  
United States District Judge

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CHURCH;	)	
BISHOP MARCUS MATTHEWS;	)	
REV. JAMES TODD, District	)	
Superintendent; and	)	
JOHN AND/OR JANE DOES 1-10,	)	
	)	
Defendants	)	

\* \* \*

APPEARANCES:

ROBERT P. DENNISON, ESQUIRE  
On behalf of Plaintiffs

PATRICK J. HEALEY, ESQUIRE  
STUART TURVILLE O'NEAL, III, ESQUIRE  
On behalf of Defendants Eastern Pennsylvania  
Conference of United Methodist Church, Southwest  
District of the Eastern Pennsylvania Conference of  
the United Methodist Church, Bishop Marcus  
Matthews, and District Superintendent Reverend  
James Todd

JOSEPH M OBERLIES, ESQUIRE  
MICHAEL J. ACOSTA, ESQUIRE  
On behalf of Defendant Limeville United Methodist  
Church

## O P I N I O N

JAMES KNOLL GARDNER,  
United States District Judge

This matter is before the court on the Motion of Defendants, Eastern PA Conference of the United Methodist Church, Southwest District of the United Methodist Church, Bishop Marcus Matthews, and District Superintendent Rev. James Todd, to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(1), which motion was filed July 14, 2008. Also before the court is Defendant, Limeville United Methodist Church's Motion to Dismiss Plaintiffs' Complaint, which motion was filed August 5, 2008.

For the following reasons, I grant both motions and dismiss plaintiffs' Complaint against all defendants.

### JURISDICTION

Jurisdiction in this case is based upon federal question jurisdiction pursuant to 28 U.S.C. § 1331. This court has supplemental jurisdiction over plaintiffs' pendent state law claims. See 28 U.S.C. § 1367.

### VENUE

Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving rise to plaintiffs' claims allegedly occurred in Lancaster County, Pennsylvania, which is located within this judicial district.

### PROCEDURAL HISTORY

Plaintiffs Sean Gray and Stephanie Gray, individually and as parents and natural guardians of S.G., a minor, initiated this action on May 30, 2008 by filing a twelve-count civil Complaint and Jury Demand against defendants George E. Darby ("Pastor Darby"), the Eastern Pennsylvania Conference of United Methodist Church ("Conference"), Southwest District of the Eastern Pennsylvania Conference of the United Methodist Church ("District"), Limeville United Methodist Church ("Limeville Church"), Bishop Marcus Matthews ("Bishop Matthews"), District Superintendent Reverend James Todd ("Reverend Todd"), and John and/or Jane Does 1-10.

Plaintiffs' claims arise from alleged sexual misconduct by Pastor Darby, an acting pastor at the Limeville church. Specifically, plaintiffs allege that from June 2006 through November 2006, Pastor Darby sexually abused minor plaintiff S.G. at a childcare and school facility located on the premises of the Limeville church.

The Complaint alleges sexual abuse, exploitation and other abuse of children pursuant to 18 U.S.C. § 2255(a) (Count I), negligence (Count II), negligence per se (Count III), respondeat superior/vicarious liability (Count IV), battery (Count V), assault (Count VI), aiding and abetting an assault (Count VII), intentional infliction of emotional distress (Count VIII), negligent infliction of emotional distress

(Count IX), unlawful restraint (Count X), invasion of person and privacy (Count XI), and breach of fiduciary duty (Count XII). With the exception of Count I, all of plaintiffs' claims sound in state law.

On July 14, 2008, the Conference, District, Bishop Matthews and Reverend Todd (collectively the "Conference defendants") filed their motion to dismiss. The Limeville church filed its motion to dismiss on August 5, 2008. Both motions aver, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, that this court lacks subject matter jurisdiction over plaintiffs' claims. Plaintiff responded to the motions on July 29, 2008 and August 29, 2008, respectively. On July 30, 2008, the Conference defendants filed a supplemental memorandum of law in support of their motion to dismiss (Docket Entry No. 17).<sup>1</sup> Defendant George E. Darby filed an Answer to plaintiffs' Complaint on September 12, 2008.

#### STANDARD OF REVIEW

Rule 12(b)(1) of the Federal Rules of Civil Procedure provides, in pertinent part:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except the following

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<sup>1</sup> The Conference defendants' supplemental memorandum is effectively a reply brief. For the parties' future reference, reply briefs are permitted only with leave of court. See E.D.Pa.R.Civ.P. 7.1(c). However, because the supplemental memorandum is helpful to the disposition of the Conference defendants' motion to dismiss, I nevertheless consider it.

defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter....

Fed.R.Civ.P. 12(b)(1).

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a party may assert either a facial or factual challenge concerning whether the District Court properly has subject matter jurisdiction over the matter. Gould Electronics Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000). A challenge to a complaint for failure to allege subject matter jurisdiction is known as a "facial" challenge. When a defendant's motion presents a facial challenge, the court must treat the allegations of the complaint as true and draw all inferences favorable to the plaintiff. NE Hub Partners, L.P. v. CNG Transmission Corporation, 239 F.3d 333, 342 (3d Cir. 2001); see also Fed.R.Civ.P. 8(f).

Dismissal pursuant to a 12(b)(1) facial challenge is proper only where the court concludes that the claims clearly appear to be immaterial and made solely for the purpose of obtaining jurisdiction, or are wholly insubstantial and frivolous. In other words, the claims must be "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-1409 (3d Cir. 1991) (internal citations omitted).

Because a court need not find a claim wholly frivolous or insubstantial in order to dismiss it under Rule 12(b)(6), the threshold to withstand a Rule 12(b)(1) motion to dismiss is significantly lower than that under Rule 12(b)(6). Kehr Packages, Inc., 926 F.2d at 1409 (citing Lunderstadt v. Colafella, 885 F.2d 66, 70 (3d Cir. 1989)). However, this lower threshold does not relieve plaintiff (as the party invoking jurisdiction) of its burden to demonstrate that this action is properly in federal court. Samuel-Bassett v. Kia Motors America, Inc., 357 F.3d 392, 396 (3d Cir. 2004).

#### FACTS

Based upon the averments in plaintiff's Complaint, which I must accept as true under the foregoing standard of review, the pertinent facts are as follows.

In June 2006, Pastor Darby was appointed by Bishop Matthews and the Conference to serve as acting pastor at the Limeville Church, which is a Methodist church within the District. Previously, he had been a traveling evangelist in Canada for more than ten years and did not have a home parish. Pastor Darby served as pastor of the Limeville church until November 2006, when he was placed on suspension with pay.

Plaintiffs Sean and Stephanie Gray were parishioners at the Limeville church during Pastor Darby's tenure as pastor. Their four-year-old son, minor plaintiff S.G., was enrolled at a



childcare facility at the Limeville church. On various occasions from June 2006 through November 2006, Pastor Darby would remove S.G. from the classroom and take him to his locked office, a private bathroom, or a hallway leading to the church basement, where he sexually fondled and molested S.G. by touching his penis and anus. Pastor Darby also forced S.G. to engage in repeated conversations about sex and adult sex acts. During these times, Pastor Darby took steps to remain undiscovered, including locking the door and windows in his office.

Pastor Darby also lured S.G. to his office and molested him during church-related activities other than the childcare program, including official church functions and get-togethers. Pastor Darby used toys, candy and pet birds to entice S.G. to his office. Each time, S.G. felt obligated to go with Pastor Darby against his will, that he had no choice, and that he could not physically leave the office. On one occasion, S.G. attempted to escape the locked office, fighting back against Pastor Darby and scratching the pastor on the face, arm and forearm.

As a result of the abuse, S.G.'s personality changed and he became withdrawn. He became afraid to be left alone and to attend the childcare facility, and developed nightmares and a fear of the dark.

Although Pastor Darby was not a teacher or principal of the childcare facility, teachers and administrators routinely

allowed him to remove S.G. from his childcare classroom.

Moreover, defendant Reverend Todd, the District supervisor, was aware that Pastor Darby kept toys, candy and pets in his office and that he would bring children to his office, where he was left unsupervised and behind locked doors.

Reverend Todd and Bishop Matthews also knew that Pastor Darby had failed to implement a "Safe Sanctuary" program endorsed and required by the United Methodist Church and the Conference. The Safe Sanctuary program is designed to protect children and prevent sexual and other forms of abuse from occurring. Although Pastor Darby's supervisors were aware that the Safe Sanctuary program had not been implemented, Pastor Darby's decision not to implement the program was not questioned.

In fall 2006, Reverend Todd and Bishop Matthews became aware of an ongoing police investigation of allegations that Pastor Darby had sexually abused S.G. After an initial police interview, Pastor Darby contacted Reverend Todd and denied any improper touching. However, Pastor Darby asked Reverend Todd and another church official, David Taylor, to destroy the toys in his office. Although church officials did not undertake an internal investigation, Pastor Darby was suspended without pay.

#### CONTENTIONS

##### Conference Defendants' Contentions

The Conference defendants contend that this action

should be dismissed for lack of subject matter jurisdiction because plaintiffs' Complaint does not sufficiently allege facts to invoke federal question jurisdiction. The Conference defendants aver that Count I of the Complaint, which alleges a cause of action under 18 U.S.C. § 2255(a), which authorizes a civil remedy for personal injuries suffered by a minor victim of certain federal felonies, cannot survive because plaintiffs have not pled sufficient facts to satisfy one of the predicate felonies mentioned in that statute.

According to the Conference defendants, plaintiffs' federal claim fails because the predicate felony statutes relied upon by plaintiffs, 18 U.S.C. § 2241(a) and (c) and 18 U.S.C. § 2242, require that defendants' actions or inactions take place "in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency". The Conference defendants contend that because the Complaint does not allege that any of the defendants' actions or inactions took place within any of these required areas, there is no federal question jurisdiction, and the Complaint should therefore be dismissed.

#### Limeville Church's Contentions

The Limeville church's motion avers the same subject matter jurisdiction argument set forth by the Conference

defendants (see above). Additionally, the Limeville church contends that Claims IV, VIII, IX and X of the Complaint should be dismissed against the Limeville church pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. Because I agree with the Conference defendants and the Limeville church that the court lacks subject matter jurisdiction over plaintiffs' claims, as discussed below, I do not reach the merits of the Limeville church's Rule 12(b)(6) arguments.

#### Plaintiffs' Contentions

Plaintiffs contend, in response to both motions' Rule 12(b)(1) arguments, that this court properly has subject matter jurisdiction over their claims pursuant to 18 U.S.C. § 2255(a). Specifically, plaintiffs aver that the predicate felony statutes' requirement that the defendants' acts take place "in the special maritime and territorial jurisdiction of the United States" is not restrictive, but rather gives federal courts jurisdiction to review such claims resulting from crimes occurring within the boundaries of the United States.

Plaintiffs' response to the Limeville church's motion to dismiss includes discussion of that motion's Rule 12(b)(6) argument. As noted above, I do not reach the merits of those contentions because I conclude that the court lacks jurisdiction over the subject matter of this action. Accordingly, I do not

include the parties' Rule 12(b)(6) contentions here.

#### DISCUSSION

"When a motion under Rule 12 is based on more than one ground, the court should consider the 12(b)(1) challenge first because if it must dismiss the complaint for lack of subject matter jurisdiction, all other defenses and objections become moot." In re Corestates Trust Fee Litigation, 837 F.Supp.104, 105 (E.D.Pa. 1993)(Buckwalter, J.). Accordingly, I first consider defendants' averment that this action should be dismissed for lack of subject matter jurisdiction.

Defendants aver that this court lacks subject matter jurisdiction over this action because plaintiffs have not alleged facts to support a question of federal law pursuant to 28 U.S.C. § 1331, which provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Specifically, defendants contend that plaintiffs have not pled facts to establish violation of any of the predicate felonies set forth in 18 U.S.C. § 2255(a), upon which plaintiffs base Count I of the Complaint.

Section 2255(a) provides, in pertinent part:

Any minor who is a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation may sue in any appropriate United States

District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than \$150,000.

18 U.S.C. § 2255(a).

Plaintiffs allege that the conduct complained of is in violation of sections 2241(a) and (c); 2242; 2244(a)(1),(2) and (5); 2244(b) and (c); 2246(2)(c) and (d); and 2246(3) of Title 18 of the United States Code.<sup>2</sup>

As an initial matter, I note that § 2255(a), by its plain language, does not create a private cause of action for injuries suffered as a result of violations of §§ 2241(a), 2244, or 2246. Plaintiffs offer no support for their allegation of a private cause of action under § 2241(a), but contend that their claims under §§ 2244 and 2246 are proper because 18 U.S.C. § 2248

mandates the imposition of restitution to victims of those sections.

Section 2248 states, in pertinent part, that "Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter." 18 U.S.C. § 2248(a). Plaintiffs submit no authority for the

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<sup>2</sup> Complaint, paragraph 74.

proposition that this section confers a private cause of action, and this court is aware of no such authority. Moreover, plaintiffs' proposed interpretation of § 2248 as conferring a private cause of action for restitution to a victim of "any offense under this chapter" fail to give meaningful effect to the language of § 2255 by rendering it duplicative and, therefore, unnecessary.<sup>3</sup>

In interpreting a statute, the court must "consider the provisions of the whole law, its object, and its policy."

ErieNet, Inc. v. Velocity Net, Inc., 156 F.3d 513, 516

(3d Cir. 1998). A "cardinal principal of statutory construction ...[is to] give effect, if possible, to every clause and word of a statute...rather than to emasculate an entire section."

Bennett v. Spear, 520 U.S. 154, 173, 117 S.Ct. 1154, 1166,

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<sup>3</sup> Section 2248 states that "The order of restitution under this section shall direct the defendant to pay to the victim...the full amount of the victim's losses". 18 U.S.C. § 2248(b)(1). The term "full amount of the victim's losses" is defined as including all costs incurred by the victim for (A) medical services relating to physical, psychiatric, or psychological care; (B) physical and occupational therapy or rehabilitation; (C) necessary transportation, temporary housing, and child care expenses; (D) lost income; (E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and (F) any other losses suffered by the victim as a proximate result of the offense. 18 U.S.C. § 2248(b)(3).

As discussed above, § 2255 establishes a civil remedy for personal injuries suffered as a result of the violation of specific sections of the Code. Under this section, any minor who is the victim of any of those sections may sue in federal court to recover "the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 2255(a).

Because § 2255 permits the victim of certain violations to recover his "actual damages", construing § 2248 as conferring a private cause of action under which a victim could recover the "full amount" of his losses would effectively render § 2255 unnecessary.

137 L.Ed.2d 281, 302 (1997) (internal citations and quotations omitted). Similarly, "interpretation of a statute involves the examination of the statute as a whole," and "[i]n that sense, we must endeavor to give each word of the statute operative effect." Smith v. Madras, 124 F.3d 457, 462 (3d Cir. 1997).

As discussed above in footnote 3, § 2255 explicitly establishes a private cause of action for damages sustained as a result of violation of certain, but not all, provisions of Chapter 109A of Title 18 of the United States Code. Plaintiffs construe § 2248, the mandatory restitution provision, as authorizing a private cause of action for damages sustained as a result of violation of all provisions of Chapter 109A. Examining the chapter as a whole, I conclude that this construction would effectively emasculate § 2255 by rendering it superfluous. See Bennett, supra.

Therefore, I dismiss Count I to the extent it alleges causes of action under 18 U.S.C. §§ 2241(a), 2244, or 2246, because the Code does not authorize a private cause of action for damages under those sections. Accordingly, on the merits, I consider only whether plaintiffs' allegations satisfy any of the predicate felonies set forth in § 2241(c) or § 2242.

#### Section 2241(c)

The Conference defendants and Limeville Church contend that plaintiffs' allegations do not satisfy the predicate felony set forth in § 2241(c). Specifically, they aver that plaintiffs



allege that all actions and inactions of the Conference defendants and the Limeville Church took place within the Commonwealth of Pennsylvania, and not within any special federal jurisdiction as required by the statute.

Section 2241(c) states, in pertinent part:

Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years..., or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for or life....

18 U.S.C. § 2241(c).

Plaintiffs contend that the phrase "special maritime and territorial jurisdiction" as it appears in § 2241(c) is not restrictive in nature, but rather should be construed to provide federal courts jurisdiction to review civil claims arising from any crime committed within the geographic boundaries of the United States. Specifically, plaintiffs aver that "territorial jurisdiction" exists domestically or abroad, and wherever the United States Congress has the authority to enact and enforce laws. Thus, plaintiffs contend that § 2241(c) authorizes a private cause of action for damages suffered under that section so long as the crime is committed within the territorial borders of the United States.

Plaintiffs' proposed, expansive construction of the phrase "special maritime and territorial jurisdiction of the United States" conflicts with the plain language of Title 18, which sets forth a specific definition of the phrase. Specifically, 18 U.S.C. § 7 defines "special maritime and territorial jurisdiction of the United States" as applying in nine specific circumstances, none of which appear relevant to this case.<sup>4</sup>

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<sup>4</sup> For purposes of Title 18 of the United States Code, "Special maritime and territorial jurisdiction of the United States" is defined as follows:

- (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(Footnote 4 continued):

(Continuation of footnote 4):

- (2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.
- (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.
- (4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.
- (5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any

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corporation created by or under the laws of the United States, or any State, Territory, District, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

- (6) Any vehicle used or designated for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property inside.
- (7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.
- (8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with

(Footnote 4 continued):

(Continuation of footnote 4):

respect to an offense committed by or against a national of the United States.

- (9) With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act -
  - (A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and
  - (B) residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions entities.

Plaintiffs have not pled any facts in support of their allegation that the defendants' relevant actions and inactions took place within the "special maritime and territorial jurisdiction of the United States" as defined by the Code, set forth in footnote 4 above. On the contrary, plaintiffs allege that all of the events, transactions and occurrences giving rise to this litigation took place at the Limeville United Methodist Church in Gap, Lancaster County, Pennsylvania.<sup>5</sup>

Based on the foregoing, I conclude that plaintiffs have not pled facts alleging that the defendants' actions took place within the "special maritime and territorial jurisdiction of the United States". Moreover, plaintiffs have not alleged that the relevant actions or inactions of the Conference defendants or Limeville Church took place under any of the other circumstances set forth in § 2241(c) above. Therefore, I conclude that plaintiffs' allegations do not satisfy any predicate felony set forth in 18 U.S.C. § 2241(c).

#### Section 2242

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Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.

18 U.S.C. § 7.

<sup>5</sup> Complaint, paragraphs 20, 24.

Similarly, the Conference defendants and Limeville Church contend that plaintiffs' allegations do not satisfy the predicate felony set forth in § 2242 because plaintiffs fail to allege any conduct by defendants which occurred within any special federal jurisdiction as required by the statute.

Section 2242 states that:

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly -

- (1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or
- (2) engages in a sexual act with another person if that other person is -
  - (A) incapable of appraising the nature of the conduct, or
  - (B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.

18 U.S.C. § 2242.

As discussed above, plaintiffs have alleged no facts to satisfy the requirement of § 2242 that defendants' actions take

place "in the special maritime and territorial jurisdiction of the United States" as defined by 18 U.S.C. § 7. Moreover, plaintiffs have not alleged facts showing that any conduct by defendants took place "in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency". 18 U.S.C. § 2242. Therefore, I conclude that plaintiffs' allegations do not satisfy any predicate felony set forth in 18 U.S.C. § 2242.

Based on the foregoing, I conclude that plaintiffs have not alleged facts to support a question of federal law under 28 U.S.C. § 1331. Plaintiffs have asserted no other basis for this court's jurisdiction over this matter.<sup>6</sup> Accordingly, I dismiss Count I of plaintiffs' Complaint for lack of subject matter jurisdiction against all defendants, without prejudice for plaintiffs to re-plead their Complaint in conformity with the requirements of 18 U.S.C. §§ 2241-2242.<sup>7</sup>

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<sup>6</sup> A review of plaintiffs' Complaint reveals that this court lacks subject matter jurisdiction over this matter on a theory of diversity jurisdiction, because the parties lack complete diversity as required by 28 U.S.C. § 1332. Specifically, according to the Complaint, plaintiffs are citizens of Pennsylvania. (Complaint, paragraphs 1-2.) Plaintiffs aver that defendants Pastor Darby, the Conference, the District, the Limeville Church, Bishop Matthews, and Reverend Todd are also citizens of Pennsylvania. (Complaint, paragraphs 4-14.)

<sup>7</sup> As noted above, the within motions were filed on behalf of the Conference defendants and the Limeville Church, respectively. Although Pastor Darby filed an Answer on September 12, 2008 and did not file a motion to dismiss on the basis of Rule 12(b)(1), the court has an obligation to satisfy itself that subject matter jurisdiction is proper, and must raise the issue *sua sponte* where appropriate. See Liberty Mutual Insurance Company v. Ward Trucking Corporation, 48 F.3d 742, 750 (3d Cir. 1995).

For the reasons expressed above, I conclude that plaintiffs have

### State Claims

In this case, original jurisdiction was based on federal-question jurisdiction pursuant to 28 U.S.C. § 1331. Having determined that Count I must be dismissed for failure to state a federal claim, the remaining tort claims sound in state law.

When all federal claims have been dismissed in an action based on federal-question jurisdiction pursuant to 28 U.S.C. § 1331, I may decline to exercise supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367(c)(3). Growth Horizons, Inc. v. Delaware County, Pennsylvania, 983 F.2d 1277, 1284-1285 (3d Cir. 1993). See also Fed.R.Civ.P. 12(h)(3), which states that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

Therefore, I dismiss the action in its entirety against all defendants without prejudice for plaintiffs to file an amended complaint on or before April 15, 2009 alleging sufficient facts to support a finding of subject matter jurisdiction. Accordingly, I do not reach the merits of the Limeville Church's alternative argument that Claims IV, VIII, IX and X of the Complaint should be dismissed pursuant to Rule 12(b)(6) of the

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not pled sufficient facts to support a finding of subject matter jurisdiction over any defendant, including the answering defendant. Accordingly, I dismiss Count I against all defendants, including the answering defendant, without prejudice for plaintiffs to file an amended complaint that sufficiently pleads facts to support a finding of subject matter jurisdiction over their claims. See Fed.R.Civ.P. 12(h)(3).

Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

CONCLUSION

For all the foregoing reasons, I grant the Motion of Defendants, Eastern PA Conference of the United Methodist Church, Southwest District of the United Methodist Church, Bishop Marcus Matthews, and District Superintendent Rev. James Todd, to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(1) and Defendant, Limeville United Methodist Church's Motion to Dismiss Plaintiffs' Complaint, and dismiss plaintiffs' Complaint in its entirety, against all defendants, without prejudice for plaintiffs to file an amended complaint asserting a proper basis for subject matter jurisdiction.